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June 17, 2022

**VIA ECF**

Honorable Naomi Reice Buchwald  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 11-md-2262-NRB

Dear Judge Buchwald:

On behalf of the BBA, we respectfully submit this brief reply to the FDIC's letter of June 15, 2022 (MDL ECF No. 3412), opposing the BBA's request for a stay of discovery pending resolution of whether the BBA is a defendant or a third party in this MDL.<sup>1</sup>

The FDIC, on behalf of plaintiffs,<sup>2</sup> bemoans any potential delays in receiving discovery from the BBA. *Id.* at 1-2. Any such delay is of plaintiffs', and particularly the FDIC's, own doing. A handful of plaintiffs, led by the FDIC, have insisted on bringing claims against the BBA in this MDL, even though the Court has consistently held it lacks personal jurisdiction over the BBA and even though significant questions remain whether the BBA is subject to jurisdiction even under the theory of conspiracy jurisdiction recently adopted by the Second Circuit. At the same time, the FDIC also sued the BBA in the U.K., and, since 2017, has pursued that litigation, which had reached the discovery stage when, earlier this year, the FDIC sought and received (in the face of the BBA's objection), a stay of the FDIC's U.K. action until July 31, 2022. This had the effect of slowing down all discovery that was already underway. Had it not insisted on that stay, the FDIC might well have achieved mutual document production with the BBA as early as this fall and continued to pursue its claims before the English courts—where jurisdiction over the BBA is not in question. The FDIC could also have accepted the dismissal of its claims in the U.S.—instead of seeking to relitigate the issue yet again—and sought third-party discovery from the BBA in this MDL.

Instead, the FDIC chose to hedge its bets on both sides of the Atlantic. As a result, the BBA remains in limbo both in this MDL—where it remains unclear whether the BBA will respond

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<sup>1</sup> Capitalized terms not otherwise defined herein have the same meaning ascribed to them in the BBA's discovery stay letter of June 9, 2022. *See* MDL ECF No. 3409.

<sup>2</sup> Other than the Bay Area Toll Authority, which already agreed to a stay of all discovery to and from the BBA on February 22, 2022. *See* MDL ECF No. 3370.

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to discovery as a party or as a non-party—and in the U.K., where the BBA had already spent a significant amount of time and effort to prepare to produce documents to the FDIC, only to see the FDIC stay that litigation until July 31. The BBA should not be forced to continue to bear the burden of the FDIC's forum-shopping. If this Court finds the BBA will remain a party to this MDL, the BBA will produce documents accordingly; if the Court finds that the BBA is a non-party in this MDL, the BBA will comply with any applicable production obligations as well. But the BBA respectfully submits that it should not be subject to duplicative and potentially inconsistent discovery obligations while its status remains unclear as a result of a few plaintiffs' desire to keep their options open. Thus, the BBA respectfully renews its request that all discovery as to it remain stayed pending resolution of whether the BBA is or will remain a party to this MDL.

We are thankful for the Court's time and attention to this matter.

Respectfully submitted,

/s/ Richard D. Owens

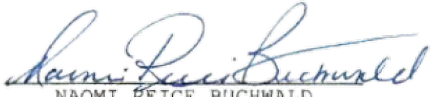
Richard D. Owens

Of LATHAM & WATKINS LLP

cc: All Counsel of Record (via CM/ECF)

Application granted.

**SO ORDERED.**

  
NAOMI REICE BUCHWALD  
UNITED STATES DISTRICT JUDGE

Dated: New York, New York  
June 22, 2022